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Class Counsel

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

DENO MILANO,

Plaintiff,

vs.

INTERSTATE BATTERY SYSTEM OF
AMERICA, INC.; INTERSTATE BATTERY
SYSTEM INTERNATIONAL, INC.,

Defendants.

Case No. 10-CV-2125-CW

**DECLARATION OF ERIC H. GIBBS IN
SUPPORT OF PLAINTIFF'S
SUPPLEMENTAL REPLY MEMORANDUM
IN SUPPORT OF FINAL APPROVAL OF
AMENDED CLASS ACTION SETTLEMENT
AGREEMENT AND PLAINTIFF'S FEE
APPLICATION**

Date: June 28, 2012

Time: 2:00 p.m.

Judge: Hon. Claudia Wilken

1 I, Eric H. Gibbs, declare as follows:

2 1. I am a partner at Girard Gibbs LLP, the law firm appointed to serve as class counsel in
3 this case. I submit this declaration in support of Plaintiff's Supplemental Reply Memorandum In
4 Support Of Final Approval of Amended Class Action Settlement Agreement and Plaintiff's Fee
5 Application. I have personal knowledge of the facts below and, if called upon to do so, could and would
6 testify competently thereto.

7 2. Attached hereto as **Exhibit 1** is a true and correct copy of the transcript of the June 25,
8 2005, deposition of Wayne Barginear. Due to the short time between the deposition and this filing, class
9 counsel has not yet received the court reporter's signed verification page.

10 I declare under penalty of perjury under the laws of the United States of America that the
11 foregoing is true and correct. Executed this 26th day of June 2012, at San Francisco, California.

12
13 /s/ Eric H. Gibbs

14 Eric H. Gibbs
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EXHIBIT 1

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA DIEGO
3 OAKLAND DIVISION

4 DENO MILANO * Case No. 10-CV-2125-CW
*
5 VS. *
*
6 INTERSTATE BATTERY SYSTEM *
OF AMERICA, INC.; *
7 INTERSTATE BATTERY SYSTEM *
INTERNATIONAL, INC. *

8
9
10
11 *****
12 ORAL DEPOSITION OF WAYNE BARGINEAR
13 JUNE 25, 2012
14 *****
15

16
17 ANSWERS AND DEPOSITION OF WAYNE BARGINEAR,
18 produced as a witness at the instance of the Plaintiffs,
19 taken in the above-styled and -numbered cause on the
20 25th day of June, 2012, at 9:51 a.m., before Susan M.
21 Foreman, a Certified Shorthand Reporter in and for the
22 State of Texas, in the offices of The Sibley firm,
23 located at 2414 North Akard, Suite 700, in the City of
24 Dallas, County of Dallas, and State of Texas in
accordance with the agreement hereinafter set forth.
25 Job No. 50664

A P P E A R A N C E S

FOR THE CLASS

MR. ERIC H. GIBBS

MS. AMY M. ZEMER

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San Francisco, California 94108

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I N D E X

P A G E

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P R O C E E D I N G S

WAYNE BARGINEAR,

having been first duly sworn, testified as follows:

E X A M I N A T I O N

BY MR. GIBBS:

Q. Could you state and spell your name?

A. Wayne Barginear, B-A-R-G-I-N-E-A-R.

Q. Do you understand the testimony you're providing today is being provided under oath?

A. Yes.

Q. And what does that mean to you?

A. It means I tell the truth.

Q. Okay. Is there anything -- are you under any medications or is there anything that would --

A. Blood pressure.

Q. Would that interfere with your ability to tell the truth?

A. No.

Q. Okay. Have you been deposed before?

A. Yes.

Q. How many times?

A. Four, approximately.

Q. Approximately. And connect -- can you describe the types of depositions?

A. I had a lawsuit against the DCAD on taxes.

Q. What's that, DC --

A. Dallas County Appraisal District.

Q. Okay.

A. I had a lawsuit against John Bryant, Senator John Bryant.

Q. What was that, just generally?

A. He owes -- he took money fraudulent -- in fraud, I'll do it that way, and we sued him, got a judgment against him. And --

MR. COX: It's ex-Congressman John Bryant, not senator.

THE WITNESS: What did I say, senator?

A. I'd like to call him something else but we'll leave it at that.

Q. Yeah. Do that off the record.

A. That's the only ones that come to mind right now.

Q. Have you been deposed in connection with any class action cases?

A. No, I don't believe so.

Q. Have you been a plaintiff in any class action cases?

A. Yeah.

MR. COX: Are you counting an objector as a plaintiff?

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<p>1 MR. GIBBS: No.</p> <p>2 MR. COX: No.</p> <p>3 A. No.</p> <p>4 Q. And you've objected to other class action</p> <p>5 settlements; is that correct?</p> <p>6 THE WITNESS: Have I?</p> <p>7 A. I have to refer to my lawyer. He handles all</p> <p>8 that.</p> <p>9 Q. Okay. You don't know if you've objected to</p> <p>10 other class action settlements?</p> <p>11 A. I do whatever he recommends.</p> <p>12 (Exhibit Number 1 marked.)</p> <p>13 Q. Okay. Let's see. I've marked as Exhibit 1 a</p> <p>14 document that your counsel filed with the Court. Take a</p> <p>15 look at that.</p> <p>16 A. (Witness complies.) Most of this other stuff</p> <p>17 is legal jargon, other than the initial information</p> <p>18 about myself?</p> <p>19 Q. If you don't want to look through it, just tell</p> <p>20 me and I'll ask my question. -</p> <p>21 A. Well, what I do on anything like this, I just</p> <p>22 ask Tom. He's done all my work, company, personally, so</p> <p>23 I just defer to him on anything like this.</p> <p>24 Q. Okay.</p> <p>25 A. And I basically probably wouldn't understand</p>	<p>1 part of it anyway, being a dummy.</p> <p>2 Q. Have you seen this document before?</p> <p>3 A. I saw it, yes.</p> <p>4 Q. When's the first time you saw it?</p> <p>5 A. This morning.</p> <p>6 Q. Had you seen it before then?</p> <p>7 A. I don't think so.</p> <p>8 Q. When did you first meet Mr. Cox?</p> <p>9 A. Geez. 20 years ago.</p> <p>10 Q. And in connection with what?</p> <p>11 A. Personally.</p> <p>12 Q. Oh, did you guys go to school together?</p> <p>13 A. No, no, just -- we live in the same area.</p> <p>14 Q. And has he represented you in legal matters</p> <p>15 from time to time --</p> <p>16 A. Yes.</p> <p>17 MR. COX: Wayne, let him finish his</p> <p>18 question before --</p> <p>19 THE WITNESS: I'm sorry. I jump ahead.</p> <p>20 I'm sorry. I have a tendency to do that. I apologize.</p> <p>21 Q. That's fine.</p> <p>22 MR. COX: It's just for her. She's the one</p> <p>23 that has a tough time taking it down.</p> <p>24 THE WITNESS: I apologize to you then.</p> <p>25 Q. Has he represented you in legal matters from</p>
Page 8	Page 9
<p>1 time to time?</p> <p>2 A. Yes.</p> <p>3 Q. And in the context of that, has he represented</p> <p>4 you as an objector in class action cases?</p> <p>5 A. Yes.</p> <p>6 Q. Has he represented you in connection with any</p> <p>7 other matters other than class action cases?</p> <p>8 A. Yes.</p> <p>9 Q. How many times has he represented you as an</p> <p>10 objector in class action cases?</p> <p>11 A. Once.</p> <p>12 Q. And what case was that?</p> <p>13 A. Propane tanks, I believe.</p> <p>14 Q. And then is he representing you as an objector</p> <p>15 in this case?</p> <p>16 A. Yes.</p> <p>17 Q. Has he represented any other members of your</p> <p>18 family in connection with --</p> <p>19 A. No.</p> <p>20 Q. -- or as an objector in class action cases?</p> <p>21 A. No. Well, I take that back. Cindy, my wife,</p> <p>22 may have been in one. I don't know. I can't answer</p> <p>23 that. I remember her being --</p> <p>24 THE WITNESS: Was she deposed?</p> <p>25 MR. COX: No.</p>	<p>1 A. Okay. She was never deposed, but for some</p> <p>2 reason I think she was involved in one.</p> <p>3 Q. When you first met Mr. Cox, that was -- that</p> <p>4 was as a neighbor; is that right?</p> <p>5 A. Well, neighborhood, yeah. We don't live next</p> <p>6 door or anything, but just going around the</p> <p>7 neighborhood.</p> <p>8 THE WITNESS: And then I actually met you</p> <p>9 at the Farmers Market.</p> <p>10 A. We had a mutual friend there that had a</p> <p>11 restaurant.</p> <p>12 Q. Okay.</p> <p>13 A. I met him there.</p> <p>14 Q. Who was that?</p> <p>15 A. A guy named Frank Zoys.</p> <p>16 Q. Okay.</p> <p>17 A. He had a restaurant for years down there.</p> <p>18 Q. That's about 20 years ago?</p> <p>19 A. Easily.</p> <p>20 Q. All right. Can you just tell me generally what</p> <p>21 the Milano v. Interstate Battery case is about?</p> <p>22 A. Interstate batteries --</p> <p>23 Q. Uh-huh.</p> <p>24 A. -- going bad and being replaced.</p> <p>25 Q. What do you mean by that?</p>

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<p>1 A. Well, the battery didn't live up to its full 2 life. If you purchase a five-year battery and it goes 3 bad in two years, well, it had to be replaced. 4 Q. And what's wrong with that? 5 A. What's wrong with it? 6 Q. Yeah. 7 A. Nothing other than if they -- you go in, you 8 get a proration. As long as they prorate it 9 appropriately, then I don't have a problem with that at 10 all. All of them do it. 11 Q. And is it your contention that Interstate was 12 not appropriately prorating the replacement batteries? 13 A. I would have to say based on what I've heard, 14 yes. 15 Q. Based on what you've heard from who? 16 A. At a men's night out, a gentleman was sitting 17 there and started talking about Interstate batteries, 18 and I had seen the guy once or twice there before, but 19 we were playing shuffle board. He mentioned Interstate 20 batteries having a problem, and he said just that -- he 21 said, Did you guys, any of you-all ever buy any. I 22 said, Well, I do, or had. And he says, Well, you need 23 to check because they got something wrong with them and 24 there's a class action lawsuit. 25 Q. And who was that you were speaking with?</p>	<p>1 A. Just a guy in the bar. 2 Q. Do you remember his name? 3 A. No. I'd only seen him twice. 4 Q. And this just randomly came up? 5 A. Yeah. He'd challenged the table in shuffle 6 board. 7 Q. And what did you do with that information? 8 A. Next time I was with Tom following -- I guess 9 the following week, because I was having problems on 10 another one of my properties with the taxing authority 11 and I was talking to him about my position as far as 12 suing them again. 13 Q. Uh-huh. And did you raise the Interstate -- 14 A. So I asked him, I said, Have you heard anything 15 about this class action lawsuit against Interstate 16 batteries. And that's how it got started. 17 Q. When, about, was that conversation? Let me ask 18 you a better question. 19 When was the conversation with the man in 20 the bar, approximately? 21 A. Within the last 12 months. 22 Q. Was it this year? 23 A. I -- really I can't remember. It's just 24 something that you hear, and I'd come in and I'd talk to 25 him about it and it goes out of my mind. It's not</p>
Page 12	Page 13
<p>1 something that -- that I need to worry about. I got 2 other things to take care of my mind. 3 Q. Right. When did you then hear about the 4 Interstate class action lawsuit -- strike that. 5 So you raised the Interstate class action 6 with Tom, correct? 7 A. Correct. 8 Q. When did you hear about it again? 9 A. I'm going to guess 30 to 60 days after that 10 conversation I was called by Tom. 11 Q. And -- 12 A. And Sibley. 13 Q. And who? 14 A. Gary Sibley, the other lawyer in the firm. His 15 firm. 16 Q. And you spoke to the two of them? 17 A. I spoke to Tom primarily. 18 Q. And what was -- just generally, what was the 19 nature of that conversation? 20 A. He just -- I'm sorry. He just told me that 21 there was a class action suit and that I had been made 22 part of it, and I told him great. 23 Q. And then what happened? 24 A. This. 25 Q. What is "this"?</p>	<p>1 A. Deposition. 2 Q. Did you look at the settlement agreement or did 3 you familiarize yourself with the terms of the class 4 action settlement? 5 A. No. 6 Q. And do you understand -- strike that. 7 Are there terms of the settlement that 8 you're opposed to? 9 A. I refer to my attorney on that. 10 Q. Okay. 11 (Exhibit Number 2 marked.) 12 Q. I'll show you this one. 13 A. Okay. 14 Q. I've marked as Exhibit 2 a Stipulation re: 15 Objector Discovery and Reply. 16 Go ahead and take a look through that, if 17 you could, please. 18 A. Okay. 19 Q. I'm going to ask you to take a look at page -- 20 at the top it says page 10 of 14? 21 A. 10 of 14? 22 Q. Yeah. There you go. 23 A. Okay. 24 Q. Have you seen the document that's reflected on 25 page 10 of 14?</p>

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Page 15

1 A. No.
2 Q. Flipping ahead to page 13?
3 A. Okay.
4 Q. Do you see there where it says Document Request
5 No. 1?
6 A. Right.
7 Q. Have you seen Document Request No. 1 before?
8 A. Yes.
9 Q. When was the first time you saw that?
10 A. Well, I really didn't see the document. Tom
11 told me over the phone what was needed and asked me, I'm
12 assuming, all these questions and I answered him with
13 each one.
14 Q. And did you conduct a search for the documents
15 requested under Document Request No. 1?
16 A. On No. 1, after five years, I destroy all my
17 records, so I don't have those.
18 Q. Okay.
19 A. They go out of storage and go to a shredder.
20 You want me to go to 2?
21 Q. How about No. 2?
22 A. That went with the sale of the vehicle. I keep
23 everything in a folder. When I sell the vehicle, I give
24 them the folder.
25 Q. When did you sell the vehicle?

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1 Q. Do you have any other -- what other vehicles do
2 you currently have?
3 A. Lexus and a Yukon.
4 Q. Do either of those vehicles have Interstate
5 batteries?
6 A. No.
7 Q. Have you purchased Interstate batteries other
8 than the one that was in the Ford F-150?
9 A. Before?
10 Q. Yes.
11 A. Yeah.
12 Q. How about since 2003 or 2004?
13 A. No, not since that last replacement battery.
14 Q. That's the one you say you purchased in 2005 or
15 2006?
16 A. No, that was -- yeah, the replacement battery.
17 The other battery began to fail -- I'm sorry, my memory
18 is not that good, but about two and a half to three
19 years after I bought it, and I took it back to the store
20 and they did their thing.
21 Q. You recall purchasing that initial battery in
22 2003 or 2004?
23 A. In those years. I can't tell you which one.
24 Q. How is it that you're able to limit it to those
25 two years?

1 A. Approximately, '07.
2 Q. What type of vehicle was it?
3 A. A Ford pickup.
4 Q. F-150?
5 A. F-150, 1990.
6 Q. All right. And having said that, with respect
7 to Document Requests 1 and 2, did you do anything to
8 actually look for the documents to see if perhaps
9 anything was left behind?
10 A. Well, I know in 1 there's nothing left behind
11 because that was all shredded and disposed of.
12 Q. Okay.
13 A. 2, the gentleman I sold it to was a
14 construction worker here on a Green Card. Where he is,
15 I have no way of finding out. I haven't seen him since
16 and didn't know him when he bought the truck.
17 Q. Did you do anything though to assess whether
18 you had any documents left behind that may have not made
19 it into the folder?
20 A. No, I mean, I looked in that year's document
21 folder that I keep everything in, I keep it in a big --
22 a big box with all the files and everything, and I
23 looked in automotive and didn't see anything, because I
24 just automatically throw them in each folder. Each car
25 has its own folder and everything goes in it.

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1 A. Because I remember when I replaced it, and I'm
2 going to say it was in June of '06. That's because it
3 was -- I know it was hot, it was in the middle of the
4 summer, and '06 sticks in my mind, and the battery was
5 about three years old, so '03. It may have been '04.
6 Battery was about two and a half -- I think they told me
7 the battery had two and a half years of its life used.
8 Actually it was a little more. I think they said 2.8 or
9 something like that. So eight months out of -- four
10 months short of being three years.
11 Q. And you initially bought it at a Firestone
12 store on Greenville Avenue; is that right?
13 A. Correct.
14 Q. And how is it that you recall that?
15 A. Well, I bought all of them there.
16 Q. You bought all of them at the Greenville store?
17 A. Yeah, it's real close to my office and it's
18 just convenient. I had used Sears years before that,
19 but they're so dadgum slow putting a battery in that I
20 went to Firestone one year in the late '80s, you know,
21 '87, '86, somewhere in there, and I bought a battery for
22 a Cutlas, and Firestone got it in and got it out, and I
23 like that. So I went back to the office, and when I
24 needed one for the truck or any other vehicle that I had
25 I went there.

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<p>1 Q. Okay.</p> <p>2 A. They just gave me good service.</p> <p>3 Q. And do you only go to the one on Greenville</p> <p>4 Avenue?</p> <p>5 A. No, I've gone to the one on -- I think I took</p> <p>6 the battery, because I was out there, and I went to the</p> <p>7 Firestone for the replacement, on Northwest Highway,</p> <p>8 approximately Abrams.</p> <p>9 Q. At the time you engaged in the replacement</p> <p>10 transactions, did you make any complaints with respect</p> <p>11 to the battery itself?</p> <p>12 A. Oh, I just told them I thought it was kind of a</p> <p>13 bad battery to go bad that fast. It was a six -- if my</p> <p>14 memory is correct, it was a six-year battery, two years,</p> <p>15 two and a half years is kind of ridiculous.</p> <p>16 Q. And what about, did you make any complaints in</p> <p>17 connection with the warranty transaction itself?</p> <p>18 A. No.</p> <p>19 Q. And did you have any complaints at the time</p> <p>20 with respect to the warranty transaction --</p> <p>21 A. I just took their word -- I'm sorry to</p> <p>22 interrupt you again, but no, I just took their word.</p> <p>23 I'm sorry. They come out and they say here's what</p> <p>24 you've got and here's what we're going to give you for</p> <p>25 the rest of the battery's life and here's the purchase</p>	<p>1 price of a new one and here's what you owe us, and I'd</p> <p>2 just pay it.</p> <p>3 Q. Looking at Document Request No. 3, did you</p> <p>4 conduct the search for request No. 3?</p> <p>5 A. Well, that goes back to that's the battery that</p> <p>6 was replaced and went in the truck and the truck was</p> <p>7 sold and the documents went with it.</p> <p>8 Q. All right. And how about No. 4?</p> <p>9 A. Any complaints, I didn't have any complaints.</p> <p>10 Q. All right. And No. 5?</p> <p>11 A. You have to refer to Tom on that. I don't --</p> <p>12 Tom and I've been in business for a long time, and he is</p> <p>13 a great attorney, my estimation, and I just do what he</p> <p>14 says, so I mean, I don't ask him for a log. He tells me</p> <p>15 if I owe him money and I give it to him, so anything</p> <p>16 there would be -- you would either already have it or he</p> <p>17 has it. I don't have it.</p> <p>18 Q. What is it that you're trying to accomplish in</p> <p>19 connection with your objection in this case?</p> <p>20 A. Well, if there's a class action lawsuit against</p> <p>21 Interstate, they must have done something wrong. I did</p> <p>22 business with them, so that's what I'm accomplishing.</p> <p>23 Q. Okay. How about No. 6?</p> <p>24 A. I'd refer to Tom on that one too.</p> <p>25 Q. How about No. 7?</p>
Page 20	Page 21
<p>1 A. Any documents would be in the possession of</p> <p>2 Tom.</p> <p>3 MR. COX: I think you've already got them.</p> <p>4 Q. Do you use e-mail?</p> <p>5 A. Sure.</p> <p>6 Q. Do you communicate with Tom by e-mail ever?</p> <p>7 A. Sometimes. But not on this.</p> <p>8 Q. Okay. And No. 8?</p> <p>9 A. That would have to be refer to my counsel</p> <p>10 again.</p> <p>11 Q. Have you received any compensation in</p> <p>12 connection with your role as an objector in class action</p> <p>13 cases?</p> <p>14 A. Once.</p> <p>15 Q. When was that?</p> <p>16 A. That was the propane tank deal.</p> <p>17 Q. And what did you do to be paid in that case?</p> <p>18 A. Filed an objection, and Tom handled the case</p> <p>19 for me and they paid the class action judgment, whatever</p> <p>20 that was, and I can't remember what it was.</p> <p>21 Q. Do you know how much money it was?</p> <p>22 A. Wasn't much. Wasn't much. It wasn't enough to</p> <p>23 pay me for coming to a deposition.</p> <p>24 Q. Yeah. Was it more than \$5,000?</p> <p>25 A. Oh, no.</p>	<p>1 Q. Was it a thousand dollars?</p> <p>2 A. No.</p> <p>3 Q. It was less than that?</p> <p>4 A. Oh, yeah, substantially.</p> <p>5 Q. 500?</p> <p>6 A. Less than that.</p> <p>7 Q. And was it your goal in that case to receive</p> <p>8 financial compensation by objecting?</p> <p>9 A. I'm just a firm believer that people that do</p> <p>10 business should do business correctly and if they don't,</p> <p>11 they should be punished, and I don't actively go out and</p> <p>12 try to solicit and find those people, but if they're out</p> <p>13 there and I happen to be involved in it, then I</p> <p>14 participate.</p> <p>15 Q. And are you speaking of the defendants who are</p> <p>16 being sued in class action cases?</p> <p>17 A. Yeah.</p> <p>18 Q. Okay.</p> <p>19 A. I'm not saying that every lawsuit means that</p> <p>20 they're guilty of it. I'm just saying that they're</p> <p>21 accused of being.</p> <p>22 Q. Understood.</p> <p>23 (Exhibit Number 3 marked.)</p> <p>24 Q. All right. We marked the long form class</p> <p>25 notice as Exhibit 3. Go ahead and take a gander at</p>

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<p>1 that, if you could.</p> <p>2 A. (Witness complies.) Okay.</p> <p>3 Q. Have you seen this document before?</p> <p>4 A. No.</p> <p>5 Q. Do you know how your -- is the person in the</p> <p>6 bar that told you about this case, is that a friend of</p> <p>7 yours?</p> <p>8 A. No.</p> <p>9 Q. Do you know how he found out about the lawsuit?</p> <p>10 A. No.</p> <p>11 Q. Did you ask him?</p> <p>12 A. No.</p> <p>13 Q. Did you ask him any questions about the case?</p> <p>14 A. No.</p> <p>15 Q. Was there a settlement at that time, do you</p> <p>16 know?</p> <p>17 A. No, he just mentioned that if you have an</p> <p>18 Interstate battery, you need to start doing some</p> <p>19 checking because there's problems with them or -- and</p> <p>20 something like that.</p> <p>21 Q. Okay.</p> <p>22 A. It was very off the cuff, and we also were</p> <p>23 drinking.</p> <p>24 Q. Got it. I understand that.</p> <p>25 (Exhibit Number 4 marked.)</p>	<p>1 Q. I've marked as Exhibit 4 the Amended Class</p> <p>2 Action Settlement Agreement. Have you had a chance to</p> <p>3 take a look at that?</p> <p>4 A. Yeah.</p> <p>5 Q. Have you seen that before?</p> <p>6 A. No.</p> <p>7 Q. Okay.</p> <p>8 (Exhibit Number 5 marked.)</p> <p>9 Q. I've marked as Exhibit 5 the Objection to</p> <p>10 Proposed Settlement, Objection to Attorneys' Fees</p> <p>11 Request, Notice of Intention to Appear, and Request to</p> <p>12 Speak at the Hearing in the case captioned In re:</p> <p>13 Pre-filled Propane Tank Marketing & Sales Practice</p> <p>14 Litigation.</p> <p>15 Same question, have you seen this before?</p> <p>16 A. No.</p> <p>17 Q. All right.</p> <p>18 (Exhibit Number 6 marked.)</p> <p>19 Q. I've marked as Exhibit 6, from the same</p> <p>20 Pre-filled Propane Tank case, a document captioned</p> <p>21 Notice of Appeal to the US Court of Appeals for the</p> <p>22 Eighth Circuit.</p> <p>23 Same question, have you seen this document</p> <p>24 before?</p> <p>25 A. No.</p>
Page 24	Page 25
<p>1 Q. Do you know that you appealed a district</p> <p>2 court's final approval order in connection with the</p> <p>3 Pre-filled Propane Tank Marketing & Sales Litigation</p> <p>4 case?</p> <p>5 A. I remember Tom talking about something like</p> <p>6 that, but --</p> <p>7 Q. Filing an appeal?</p> <p>8 A. So I would say he told me, but I haven't -- I</p> <p>9 didn't see any documents, and he knows I don't want</p> <p>10 documents, so.</p> <p>11 Q. And do you know why you filed an appeal?</p> <p>12 A. No.</p> <p>13 Q. Do you know that the district court approved</p> <p>14 the settlement as fair, reasonable and adequate?</p> <p>15 A. That's a legal question, whether it's fair,</p> <p>16 legal and adequate. You'd to ask my attorney, and if he</p> <p>17 filed an appeal, I think he's saying that it wasn't.</p> <p>18 Q. Okay.</p> <p>19 A. I'm not trying to be smart. That's my only</p> <p>20 answer I can give you.</p> <p>21 Q. Okay. That's fine.</p> <p>22 (Exhibit Number 7 marked.)</p> <p>23 Q. I've marked as Exhibit 7 from the same propane</p> <p>24 tank case a document entitled -- it's a judgment</p> <p>25 dismissing the appeal. Have you seen this before?</p>	<p>1 A. No.</p> <p>2 Q. And do you know that the appeal that you filed</p> <p>3 was dismissed?</p> <p>4 A. No.</p> <p>5 Q. Okay.</p> <p>6 A. So you must have been correct.</p> <p>7 Q. What do you mean by that?</p> <p>8 A. You must have been right.</p> <p>9 Q. Who?</p> <p>10 A. You won, I guess.</p> <p>11 Q. I'm not sure what you mean.</p> <p>12 A. Well, if the appeal was set aside, then you</p> <p>13 must have one.</p> <p>14 Q. Oh, I see. Do you know that your lawyer</p> <p>15 voluntarily dismissed that appeal?</p> <p>16 A. No.</p> <p>17 Q. All right. Next document.</p> <p>18 (Exhibit Number 8 marked.)</p> <p>19 Q. We've marked as Exhibit 8 an Objection to</p> <p>20 Proposed Settlement in a case Kardonik, K-A-R-D-O-N-I-K,</p> <p>21 V. JPMorgan Chase & Co. The document refers to someone</p> <p>22 named Cindy Barginear?</p> <p>23 A. That's my wife.</p> <p>24 Q. Okay. And do you know a Daniel Sibley?</p> <p>25 A. Yes, I know Daniel Sibley.</p>

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<p>1 Q. How do you know him?</p> <p>2 A. He's the son of Gary Sibley.</p> <p>3 Q. And is Gary Sibley Tom's law partner?</p> <p>4 A. I don't know if it's partner or not, but they</p> <p>5 practice in the same office complex.</p> <p>6 Q. Okay. And do you know Katie Sibley?</p> <p>7 A. No.</p> <p>8 Q. Do you know of her?</p> <p>9 A. No.</p> <p>10 Q. Okay. Do you have any understanding of why</p> <p>11 your wife filed an objection to this settlement?</p> <p>12 A. I think it had to do with a mortgage. I could</p> <p>13 remember one but I couldn't remember why, and I pay all</p> <p>14 the bills, but her name was on the property, so she was</p> <p>15 the mortgage holder, if I'm correct.</p> <p>16 Q. I see.</p> <p>17 A. And again, I don't know. I just told her, Go</p> <p>18 to Tom and do what he says.</p> <p>19 Q. Did you-all receive a notice of class action in</p> <p>20 the mail or something in that case?</p> <p>21 A. I can't remember.</p> <p>22 Q. How about in the propane case, how did you</p> <p>23 learn about that case?</p> <p>24 A. I don't remember that one either. I was talk</p> <p>25 -- this was kind of weird, but I was buying a propane</p>	<p>1 tank at Albertsons and there was a guy out there saying,</p> <p>2 Don't buy that. Natural question is "why?"</p> <p>3 Q. Just some random guy?</p> <p>4 A. Yeah, standing out there trying to create</p> <p>5 problems, I guess, for Albertsons. They ran him off.</p> <p>6 They called the cops on him, ran him off, because he's</p> <p>7 out there telling everybody, Don't buy a tank. And I</p> <p>8 bought tanks continuously from there and other places</p> <p>9 but -- because I have need of them, so. We have those</p> <p>10 heaters that you have in the backyard on the patio and</p> <p>11 we also have cookers and stuff so I'm always buying</p> <p>12 propane.</p> <p>13 Q. Do you save your receipts from those purchases?</p> <p>14 A. No.</p> <p>15 Q. Was it a person who was warding people off --</p> <p>16 warding them off on anything other than the propane</p> <p>17 tanks?</p> <p>18 A. No.</p> <p>19 Q. Just the propane tanks?</p> <p>20 A. Yeah.</p> <p>21 Q. Had you seen him before?</p> <p>22 A. No.</p> <p>23 Q. Have you seen him since?</p> <p>24 A. No. Nicely dressed man in a suit.</p> <p>25 Q. And did he explain there was a class action?</p>
Page 28	Page 29
<p>1 A. He said that there was a lawsuit. He didn't</p> <p>2 say class action. He just said there was a lawsuit and</p> <p>3 you need to be careful. Pretty much it.</p> <p>4 Q. Did he say anything else?</p> <p>5 A. Not really. I mean, they had people out there</p> <p>6 standing and watching him trying to keep him from</p> <p>7 bugging customers. You know, the propane tank, I don't</p> <p>8 think, was as big a concern to the store as it was that</p> <p>9 the customers were being interfered with.</p> <p>10 Q. Did you ask him any questions?</p> <p>11 A. Didn't have a chance.</p> <p>12 Q. Did you -- did you buy the propane tank?</p> <p>13 A. I asked the store if -- were they blowing up or</p> <p>14 something, and they said no, so I bought the tank.</p> <p>15 Q. Was there a tag or a sign or anything on the</p> <p>16 tank referring to a class action case?</p> <p>17 A. No, not to my knowledge.</p> <p>18 Q. Let's take five minutes.</p> <p>19 (Brief recess.)</p> <p>20 Q. We're back on the record. Do you have an</p> <p>21 attorney representation agreement with Mr. Cox in</p> <p>22 connection with this case?</p> <p>23 A. If we do, it's a real old one. No, with this</p> <p>24 case, I don't think so.</p> <p>25 Q. And again, what is it that you hope to</p>	<p>1 accomplish with your objection?</p> <p>2 A. Well, if -- in my business, if I do something</p> <p>3 wrong to a group of people and let's say five, four of</p> <p>4 them find out about it and get compensation from me, the</p> <p>5 fifth person ought to get it too, and so I'm in that</p> <p>6 thought process.</p> <p>7 Q. And is it your contention that the compensation</p> <p>8 that's being made available in this case is inadequate?</p> <p>9 A. Oh, sure, I don't think you can pay me enough</p> <p>10 for my deposition time this morning.</p> <p>11 Q. And beyond that?</p> <p>12 A. Beyond that, I don't know. I haven't seen</p> <p>13 anything.</p> <p>14 Q. Okay. Do you know what a class representative</p> <p>15 is?</p> <p>16 A. No.</p> <p>17 Q. A class representative is the person who</p> <p>18 initiates the class action lawsuit against the alleged</p> <p>19 wrongdoer.</p> <p>20 A. Okay.</p> <p>21 Q. Have you ever initiated any class action</p> <p>22 lawsuits?</p> <p>23 A. No.</p> <p>24 Q. If the settlement in this case is set aside</p> <p>25 because of your objection, are you prepared to step in</p>

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1 and represent the class in this case?

2 A. I'd have to think that over.

3 Q. Have you had that discussion with your lawyer?

4 A. No.

5 Q. What would influence your willingness to step
6 in as a class representative?

7 A. What Tom tells me.

8 Q. Would you be prepared to spend your own money
9 in connection with acting as a class representative?

10 A. Depends on the final result.

11 Q. What do you mean by that?

12 A. Well, you don't throw money a hole with no hope
13 of recovery. If I'm throwing money down a black hole
14 and I put 50,000 in and the best I could hope to get
15 back is 20, then no, I'm not going to do that.

16 Q. What if the best you could get back is \$10?

17 A. I wouldn't put any money in. I wouldn't take a
18 deposition.

19 Q. Would you take any financial risk in connection
20 with a case like that?

21 A. No.

22 Q. In connection with your objection here, are you
23 intending to represent the interest of other people?

24 A. I would think as a class everyone in the class
25 represents the others in the class, so probably, yeah.

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1 CHANGES AND SIGNATURE

2 WAYNE BARGINEAR - 6.25.12

3 PAGE LINE CHANGE REASON

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1 Q. Okay. And do you understand that there are
2 legal obligations that come into play when you're
3 representing the interest of others in connection with a
4 lawsuit?

5 A. I could see that probably happening, but no,
6 I've never discussed that with Tom.

7 Q. You have no understanding of what those legal
8 obligations are?

9 A. Not really. Not being a lawyer, I'd have to
10 say no.

11 Q. Okay. If you could change the terms of the
12 settlement in this case, what would you do?

13 A. I don't know what the terms of the settlement
14 are so I can't answer that.

15 Q. Okay. All right. Quick break. I'm probably
16 done.

17 (Brief recess.)

18 MR. GIBBS: That's all I have.

19 MR. COX: We need our stipulations or
20 agreements. Just by the Rules?

21 MR. GIBBS: Yeah, the Rules are fine.

22 MS. DURFEE: Laura Jane Durfee for
23 Interstate Battery, no questions at this time.

24 (End of Proceedings.)
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8
9 I, WAYNE BARGINEAR, have read the foregoing deposition
10 and hereby affix my signature that same is true and
11 correct, except as noted above.

12 WAYNE BARGINEAR

13 THE STATE OF TEXAS)
14 COUNTY OF)

15 Before me, , on this day
16 personally appeared WAYNE BARGINEAR, known to me (or
17 proved to me on the oath of or
18 through (description of identity card or
19 other document)) to be the person whose name is
20 subscribed to the foregoing instrument and acknowledged
21 to me that he executed the same for the purposes and
22 consideration therein expressed.

23 (Seal) Given under my hand and seal of office this
24 day of , 2012.

25 Notary Public in and for the State of Texas

1 STATE OF TEXAS)

2 This is to certify that I, Susan M. Foreman,
3 Certified Shorthand Reporter in and for the State of
4 Texas, reported in shorthand the statement given at the
5 time and place set forth in the caption hereof, and that
6 the above and foregoing pages contain a full, true, and
7 correct transcript of said statement.

8 Dated: 6/25/2012
9

10
11 Susan M. Foreman, CSR No. 5240
12 Expiration Date: 12.31.13
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